



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Emerald Maintenance, Inc.

File: B-225735; B-225736; B-225737

Date: May 6, 1987

DIGEST

Protested bids are not materially unbalanced where the estimated quantities in the solicitations are reasonably accurate representations of the government's anticipated actual needs, based on the best information available, and, therefore, there is no real doubt that awards under the solicitations will represent the lowest ultimate cost to the government.

DECISION

Emerald Maintenance, Inc., protests the awarding of any contracts under invitations for bids (IFB) Nos. N62755-86-B-2818; N62755-86-B-2819; and N62755-86-B-2820. The solicitations were issued by the Department of the Navy for labor and materials needed to repair and maintain military housing at various locations on the island of Oahu, Hawaii. Emerald, the third low bidder on all three solicitations, contends that the first and second low bids are materially unbalanced because they are a result of the bidders taking advantage of unrealistic estimates in the solicitations' schedules.

We deny the protests.

The bid schedules in the IFB's called for bidders to submit line item prices for estimated quantities of various materials associated with maintaining electrical systems, replacing and repairing missing or damaged items, and plumbing. The schedules also called for line item prices for various janitorial services such as waxing floors, shampooing rugs, and cleaning kitchens and bathrooms. IFB 2818 set forth 314 line items, IFB 2819, 369 line items, and IFB 2820, 380 line items. Award under each of the solicitations was to be based on the lowest total aggregate price for all line items. Len Corporation was the low aggregate

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bidder, with Society Painters second low, for all three solicitations.

Emerald argues that the Navy's estimates are defective because they are not based on the best information available. Emerald alleges that the Navy's estimates do not take into account the actual quantities of materials that were used in prior contracts to repair and maintain the military housing. The firm asserts that in response to its request for these figures, the Navy indicated that they had not been compiled in readily accessible form, and that the agency was not going to review approximately 95,000 documents manually in order to obtain them. According to Emerald, this response shows that the Navy did not consider all relevant information in preparing its estimates.

Emerald also asserts that because Len and Society previously have performed repair and maintenance work on military housing for the Navy, they were able to anticipate that the actual quantities of required materials would be substantially different than the quantities estimated in the bid schedules. Emerald highlights several line items in the three IFB's where it alleges that Len, especially, bid far below the cost of the materials because Len knew that the quantities actually required would be drastically lower than the estimates. Emerald argues that if these items are not procured in the quantities estimated, Len's bid may not result in the lowest cost to the government. Emerald contends that because it thus is impossible for the government to determine that an award under any of the IFB's will result in the lowest cost to the government, all three solicitations should be canceled and the Navy's needs should be resolicited using estimated quantities based on actual past ordering experience.

Emerald is correct that when an agency solicits bids for a requirements contract on the basis of estimated quantities, the estimates must be calculated based on the best information available. Where a solicitation's estimated quantities are materially defective, so that unbalanced bids are submitted, the solicitation generally should be canceled and reissued since it would not be clear that award to the low bidder would result in the lowest cost to the government. Edward B. Friel, Inc., et al., 55 Comp. Gen. 488 (1975), 75-2 C.P.D. ¶ 333.

There is no requirement, however, that the estimates be absolutely correct. Rather, the estimated quantities simply must be reasonably accurate representations of anticipated actual needs. Space Services International Corp., B-207888.4, et al., Dec. 13, 1982, 82-2 C.P.D. ¶ 525. It is the protester's burden to show that the stated estimates are

are not based on the best information available or otherwise are deficient. JETS Services, Inc., B-190855, Mar. 31, 1978, 78-1 C.P.D. ¶ 259. Absent such showing, the low bid under a solicitation for a requirements contract should be accepted, since there would be no reason to believe that contracting with the firm will not actually result in the lowest cost to the government. Paragon Van Lines, Inc., B-222018.2, June 25, 1986, 86-1 C.P.D. ¶ 591. We find that Emerald has not met this burden.

Emerald's protest is essentially based only on speculation that Len's prices for some line items are inflated artificially, and that the IFB's estimates might prove to be wrong. Emerald did not question the accuracy of the IFB's estimated quantities of materials before bid opening, and even stated at the time it filed its protest that it did not have documentation to substantiate its claim that the Navy's estimates were not the best ones available.

Moreover, the Navy insists in response to the protest that the estimates in the three IFB's are reasonably accurate representations of its actual anticipated needs, and points out that they were prepared by the office that is responsible for requesting and funding repairs during the change in occupancy of military housing. The Navy further emphasizes that its contracts personnel did take into account past ordering experience based on their recollections of such ordering, although the Navy also asserts that past ordering cannot be the sole basis for projecting future repair and maintenance requirements. In this respect, we have held that an agency is not required to base its estimates solely on historical data. DSP, Inc., B-220062, Jan. 15, 1986, 86-1 C.P.D. ¶ 43. As noted by the Navy, future ordering requirements are affected by major repair work accomplished under recent contracts, changing policies on maintenance standards, availability of funds, and year-to-year changes in planned improvement projects. The Navy states that the office responsible for requesting these repairs took all these factors into consideration.

We also find nothing in the record to support Emerald's assertion that Len and Society unfairly were able to anticipate that the actual quantities would be substantially different than the estimated quantities in the IFB's bid schedules. We note in this connection a suggestion in the record that Emerald's failure to take advantage of the provisions in the IFB's for a site inspection of the housing was the primary reason that Emerald's bids were substantially higher than either Len's or Society's. Emerald's bid on IFB 2818 was \$450,855 more than Len's; on IFB 2819, \$526,398 more; and on IFB 282, \$1,028,989 more than Len's. In any event, there is nothing improper in the

fact that a firm may enjoy a competitive advantage by virtue of incumbency where, as here, it was not the result of unfair action or preference on the government's part. Automated Datatron, Inc., B-219195, July 1, 1985, 85-2 C.P.D. ¶ 9.

Consequently, we find nothing substantive in the protest record which would create a reasonable doubt that acceptance of any of Len's low bids would result in the lowest cost to the government. Emerald's protests are denied.

for *Hyman Epro*
Harry R. Van Cleve
General Counsel